



POLICE DEPARTMENT

August 25, 2010

MEMORANDUM FOR: Police Commissioner

Re: Detective Joseph Dimichele
Tax Registry No. 901466
Organized Crime Control Investigations Division
Disciplinary Case No. 85472/09

The above-named member of the Department appeared before me on March 3, 2010, and March 16, 2010, charged with the following:

1. Said Detective Joseph Dimichele, assigned to the Organized Crime Investigation Division, on or about November 19, 2008, was wrongfully and without just cause absent from said residence without permission of said Detective's District Surgeon and or Health Services Division Sick Desk Supervisor.

P.G. 205-01, Page 2, Paragraph 4 – REPORTING SICK, PERSONNEL
MATTERS

2. Said Detective Joseph Dimichele, assigned as indicated in Specification #1, while on sick report on or about November 24, 2008 and December 2, 2008, in the vicinity of 3450 Kingsbridge Avenue, Bronx County (Medical District #21),¹ did wrongfully cause false entries to be made in Department records when said Detective told a Department Surgeon and Department Orthopedist that he was unable to drive an automobile and had difficulty sitting, when in fact, those statements were not the truth.
(As amended)

P.G. 203-05, Page 1, Paragraph 4 – PERFORMANCE ON DUTY GENERAL
GENERAL REGULATIONS

¹ The Assistant Department Advocate moved to amend this charge to reflect that the false entries the Respondent allegedly caused to be made in Department records on December 2, 2008, occurred at the Medical Division, Lefrak, Queens, not at 3450 Kingsbridge Avenue, the Bronx (Medical District #21).

3. Said Detective Joseph Dimichele, assigned as indicated in Specification #1, while on sick report on or about December 2, 2008, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said Detective exaggerated the degree of his injury when he claimed that he was unable to drive, but he was observed driving his vehicle while away from the vicinity of the Department medical facility.

P.G. 203-10, Page 1, Paragraph 2(D) and Paragraph 3 – PUBLIC CONTACT
PROHIBITED CONDUCT

4. Said Detective Joseph Dimichele, assigned as indicated in Specification #1, while on sick report on or about December 9, 2008, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said Detective exaggerated the degree of his injury when he was observed stopping and exiting the vehicle he operated, two blocks from a Department medical facility, to switch seats with his female passenger, who then drove the vehicle to the front of the medical facility, where said Detective entered the facility walking with a cane.

P.G. 203-10, Page 1, Paragraph 2(D) and Paragraph 3 – PUBLIC CONTACT
PROHIBITED CONDUCT

The Department was represented by Michelle Alleyne, Esq., Department Advocate's Office, and the Respondent was represented by Peter Brill, Esq. The Respondent, through his counsel, entered a plea of Guilty to Specification No. 1 and a plea of Not Guilty to the remaining charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent, having pleaded guilty, is found Guilty of Specification No. 1. The Respondent is found Not Guilty of Specification Nos. 2 and 3. It is recommended that Specification No. 4 be Dismissed.

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Sergeant Charles Garguilo, Sergeant Michael Hengel, Dr. Bernard White and Dr. Russell Miller as witnesses.

Sergeant Charles Garguilo

Sergeant Charles Garguilo, assigned to the Medical Division's Absence Control Investigation Unit (Absence Control), testified that he has been a member of the Department for 20 years. He is a field supervisor in charge of visiting sick members of the service at their residences. Such visits are usually made for two reasons: the member has been designated chronic sick or Absence Control receives a referral from the member's command, or from an anonymous tip, alleging that the member is abusing the Department's sick leave policy.

He recalled that on November 19, 2008, he was on duty at Absence Control when, at 1800 hours, he drove to the Respondent's home at [REDACTED]. He went to the Respondent's home because a referral was received earlier that day from the Respondent's immediate supervisor, Lieutenant Stein, who stated that the Respondent had gone sick on November 18, 2008, with a line of duty injury that was unwitnessed and that he believed that the Respondent might be abusing sick leave as well as malingering. When he arrived at the Respondent's residence, he parked his vehicle in the driveway and knocked on his door several times. Because no one came to the door and because the interior of the house was "pitch black," he returned to his car and made several phone calls to the Respondent's home phone number. Because no one answered,

he left a message. He drove out of the driveway, moved two houses down from the Respondent's driveway, and parked. From that location, he was able to see the Respondent's home extremely clearly.

The Respondent returned home at approximately 1820 hours. He was driving a gray Nissan and he parked in his driveway. When he exited his auto, he retrieved a toddler from the back seat. He opened the back door, picked up the toddler and carried the toddler into his home. The Respondent did not use any type of aids to walk from his car with the child in his arms. Garguilo exited his vehicle. As he walked towards the Respondent's home, he (the Respondent) walked out of his residence. Garguilo identified himself and asked him where he had been. He told Garguilo that he was down visiting his mother-in-law with his son. Garguilo asked him if he was in the out-of-residence log, if he had permission to leave his residence and if he had a pass. The Respondent answered in the negative to all of these questions. Garguilo instructed the Respondent to report the next day to the clinic, which is District 21 in the 50 Precinct.

The next day, November 20, 2008, he reported as directed and complained to Dr. White that he had suffered a back injury which he sustained from boxes that he was moving that contained computers. On November 24, 2008, the Respondent had a follow-up appointment with Dr. White at the same clinic. After the Respondent's medical appointment on November 24, 2008, Garguilo spoke to Dr. White regarding what information the Respondent had conveyed to him during his visit regarding physical limitations. Dr. White told him that the Respondent had stated that he could not drive, that he was in too much pain.

On December 2, 2008, the Respondent had another follow-up appointment, this time at Lefrak, Queens, with Dr. Miller. Sergeant Hengel conducted surveillances of the Respondent after his visits with Dr. White on December 2 and Dr. Miller on December 9.

On cross-examination, Garguilo confirmed that he was the primary investigator on this case. With regard to his observation of the Respondent on November 19, he did not document what he had observed and his testimony was "just from memory." He took no photos or video. The Respondent left his toddler in the house when he came outside to talk to Garguilo. He was not concerned for the safety of the toddler being in the house by himself because they were talking in the walkway near the front door of the Respondent's house and the door was open. In his investigation, he did not determine whether there was anyone that had ordered the Respondent not to drive or whether any rule or Patrol Guide section or somewhere else that prohibits a member in the Respondent's condition from driving under those circumstances.

Garguilo testified that he did not know how the Respondent got to District 21 on November 20, 2008, or how much time the Respondent spent with Dr. White that day. He confirmed that there is no separate log denoting the time that a member is seen by the doctor, there is only a log denoting what time the member enters and leaves the district clinic. He confirmed that other than the observations that he and Sergeant Hengel made he does not know how the Respondent arrived at his other surgeon appointments. After November 19, 2008, he conducted a supervisory visit to the Respondent's home. He spoke to a woman who was at the residence. When he conducted supervisory visits to the Respondent's home, he kept a signature sheet and there were occasions when he was at the Respondent's home and had him sign the signature sheet. On December 2, 2008, the

Respondent's appointment with Dr. Miller took place at the Medical Division, Lefrak, Queens, not at 3450 Kingsbridge Avenue, the Bronx, which is Medical District 21.

Sergeant Michael Hengel

Sergeant Michael Hengel, assigned to Absence Control, testified that he has been a member of the Department for 25 years and usually investigates line of duty injury cases referred from district surgeons or from the Internal Affairs Bureau or from the Article 2 Medical Board officers.

He conducted a surveillance of the Respondent on December 2, 2008, after he received a call from the commanding officer of Absence Control, Lieutenant Valente, who asked him to go to the Respondent's residence, which was in [REDACTED] [REDACTED], because he had been seen earlier that day by Dr. Miller, the Department orthopedist, and he had made statements to Dr. Miller. The lieutenant asked him to go over in the area of his residence to see how he arrived back at his residence; specifically, whether he was driving an auto or whether somebody was driving him home. When he arrived at the Respondent's residence, he positioned himself by parking across the street from the Respondent's home. At about 1220 hours, he observed the Respondent driving his auto northbound on [REDACTED] and making a right turn onto [REDACTED] which is the street he lives on. He was alone in the auto. He recognized the Respondent from his photo which had been obtained from the Department's "photo base." After he saw the Respondent drive down [REDACTED], he left the area.

He conducted more surveillances of the Respondent's residence after December 2, 2008, but the only other time that he saw the Respondent was on December 9, 2008, at

0610 hours, when he saw the Respondent driving out of [REDACTED] and making a left turn to proceed southbound on [REDACTED] with a passenger in his vehicle. He followed the Respondent's auto onto the Palisades Parkway southbound and then onto the New York State Thruway south bound. He saw the Respondent make several lane changes both on the Palisades and on the Thruway without signaling and observed he was driving approximately 70 to 75 miles an hour. The Respondent did not appear to have any difficulty maneuvering his vehicle. He followed him over the Tappan Zee Bridge to Van Courtland Park South, which is the exit for the 50 precinct. He then followed him on Van Courtland Park South to the intersection of Broadway and south on Broadway to West 240th Street and onto Tibbett Avenue where the Respondent pulled over to the side of the road, got out of the driver's side of the auto, and walked around to the passenger side. The passenger, who he later ascertained was Lieutenant Madeline Quiles, got out of the vehicle and then got into the driver's side of the auto.

When the Respondent pulled over to the side of the road, got out of the driver's side of the auto, and walked around to and entered the passenger side, he did not utilize a cane or a walker or any other aid and he was not limping as he got out of the vehicle. Quiles drove to the 50 Precinct which was three to four blocks away from where they had stopped and changed seats. The Respondent entered the 50 Precinct which houses the Bronx Medical District. Quiles parked on Kingsbridge Avenue. At about 8:40 a.m., the Respondent and Quiles exited the 50 Precinct. The Respondent had a cane and walked to the vehicle with a slight limp. He got into the passenger side of the auto and Quiles got into the driver's side of the auto. Hengel followed them north. They pulled over at a rest stop on the New York State Thruway. Quiles got out of the vehicle and went into the rest

stop and when she came back out, she got back in the driver's seat and continued to drive the auto.

On cross-examination, Hengel confirmed that on December 2, 2008, his observation of the Respondent began at the corner of [REDACTED] and [REDACTED]. He did not know whether the Respondent was driving when he left the Medical Division or if he made any stops on the way home. On December 9, he observed the vehicle pull over on Tibbett Avenue. It was not more than a few minutes from the time he observed the vehicle pull over to the time he observed it pull away. He drove around the block and when he stopped and parked on the corner he was able to see the switch. He could not recall if there were stop signs on all three turns. There are no traffic lights in that area. Once the driver walked to the passenger side and they got back in the vehicle, they immediately left and drove towards the precinct. He conceded that during the time that he was driving around the block they had not made the switch yet and he could not know what was going on before he came around the corner. He had been involved in a previous investigation regarding Lieutenant Quiles. He was aware that she had retired from the Department but he was not aware that she had been awarded a disability pension.

Dr. Bernard White

Dr. Bernard White, a Department Police Surgeon who sees 15 to 40 members of the service (MOS) each day for "consults," testified that he has no present recollection of the consults he conducted with the Respondent on November 24, 2008 and December 1, 2008. His handwritten patient consult notes, regarding the consults he conducted with

the Respondent on those two dates were admitted into evidence as past recollection recorded. [Department's Exhibit (DX) 1]. In his patient consult notes regarding the consult he conducted with the Respondent on November 24, 2008, he wrote "difficulty sitting" and "can't drive – driven by his wife." Regarding the consult he conducted with the Respondent on December 1, 2008, his patient consult notes state "difficulty sitting."

On cross-examination, Dr. White confirmed that he does not know how the Respondent got to District 21 on November 24, 2008, or on December 1, 2008, or how much time the Respondent spent with him that day. Dr. White confirmed that he authorized an MRI for the Respondent.

Dr. Russell Miller

Dr. Russell Miller, a Department Orthopedic District Surgeon who sees 12 to 15 MOS each day for medical consultations and who spends an average of about 15 minutes with each MOS at these medical consultations, testified that he does not pose "specific function questions" to MOS during medical consultations. He handwrites patient consult notes which include statements MOS make about their ailment and how their ailment affects them. Since he testified that he has no present recollection of the consult he conducted with the Respondent on December 2, 2008, the handwritten notes he wrote in the "Consultant's Report" section of the "Consultation Referral – Medical Division" (PD 429-180) report regarding this consult were admitted into evidence as past recollection recorded (DX 2). In his patient consult notes he wrote that the Respondent "states unable to drive & difficulty sitting & needs help to get dressed."

On cross-examination, Dr. Miller confirmed that after the consult he conducted with the Respondent on December 2, 2008, he continued the Respondent on sick report.

The Respondent's Case

The Respondent called retired Lieutenant Madeline Quiles as a witness and he testified in his own behalf.

Retired Lieutenant Madeline Quiles

Madeline Quiles, who retired from the Department after 15 years of service, held the rank of lieutenant at the time of her retirement when she was awarded a three-quarters disability pension as the result of a shoulder injury. She has been romantically involved with the Respondent for ten years, they live together in [REDACTED], and they have a son together, although they have never married. The Respondent has never referred to her as his wife. Quiles testified that as the result of the herniated disc on his lower back, the Respondent "has his good days and his bad bays" and on a bad day he complains that he is in a lot of pain. On a few occasions, she had to dress him, including putting his socks and underwear on him. After the November 18, 2008, incident when he had to catch a falling television, he could not drive long distances and he sometimes had to use a cane.

On the day that the Respondent had to report for a medical consultation at Kingsbridge Avenue, the Bronx, (Medical District #21), she asked him if he would drive because she was feeling sick that morning. Both she and the Respondent noticed that an unmarked Department vehicle was parked at the end of their block and that it followed

them during the drive from [REDACTED] to the Bronx during which she had to ask the Respondent to pull off the highway because she had to throw up. The unmarked Department car then passed by them. She then drove the rest of the way.

On cross-examination, Quiles testified that even prior to November 18, 2008, the Respondent could not drive long distances whenever the disc impinges the nerve and that he drove even when he was in pain. Sometimes he had to sleep on the floor of their bedroom rather than in their bed. He had to use a cane to walk up and down stairs.

The Respondent

The Respondent, who has 19 years of service and who is assigned to the Organized Crime Control Investigations Division, testified that he originally suffered an on duty injury to his back in 1995 while he was assigned to patrol duties in the 43 Precinct when he slipped and fell down a flight of stairs while conducting a vertical patrol. He was removed to the hospital. After that, when his lower back would go "out on me," he would have to sleep on the floor rather than in his bed. In May, 2008, he was home pulling weeds from his lawn when his back "went out on me." He was out on sick leave for four weeks after previously having a perfect attendance record. He had an MRI on May 19, 2008, and was diagnosed as having early disc degeneration and a small disc herniation. Soon thereafter, while he was on vacation, he slipped in the shower and broke a rib. He returned to work, but was in pain.

On November 18, 2008, he was assigned to unload a truck containing 20 to 25 computers and a television set. When the television set started to fall off the cart he was pushing, he bent over to catch it before it fell off. He immediately felt pain in his lower

back and he fell to the floor. He was transported to a hospital and prescribed Percocet for his pain.

On November 19, 2008, he was on sick report. He was not inside his residence which is [REDACTED], when Sergeant Garguilo of Absence Control came to his home because he went to his mother's house to pick up his three-year-old son who was feeling sick. He was surprised that Garguilo had been sent to his home by his CO "because I know I have no sick record." On November 20, 2008, he reported to Dr. White who took notes [Respondent's Exhibit (RX) A]. He did not tell Dr. White that he had difficulty driving. On November 24, 2008 and December 1, 2008, he again reported to Dr. White who took notes (DX 1). Quiles drove him to the appointments because he was in a lot of pain. He "basically tried to tell the doctor" that he "had difficulty driving" and "difficulty sitting." He has never exaggerated the extent of his injury. Dr. White authorized an MRI. On December 2, 2008, he reported to Dr. Miller who took notes (DX 2). He also told him that he had difficulty driving and sitting. An MRI was performed on December 4, 2008. The MRI revealed the Respondent has a herniated disc in his back. The Respondent testified that he has never referred to Quiles as his wife. He testified that he has no intention of applying for a disability pension as the result of his back injury.

On cross-examination, he agreed that when he drove from his residence in [REDACTED] to his mother's house in the [REDACTED] to pick up his son, the distance was about 35 miles and the trip to the [REDACTED] took about 35 minutes. Garguilo approached him while his son was still in the car, not after he and his son had entered the house. He told Dr. White and Dr. Miller that he had difficulty driving and sitting. He never told them, "I can't drive." He told Dr. White that his fiancée had driven him there.

FINDINGS & ANALYSISSpecification No. 1

The Respondent, having pleaded guilty, is found Guilty of Specification No. 1.

Specification Nos. 2 and 3

Under Specification No. 2, it is charged that the Respondent on November 24, 2008, wrongfully caused false entries to be made in Department records by falsely telling Dr. White, a Department Surgeon, that he was unable to drive an automobile and had difficulty sitting; and that on December 2, 2008, he wrongfully caused false entries to be made in Department records by repeating these alleged lies to Dr. Miller, a Department Orthopedist. Under Specification No. 3, it is charged that the Respondent on or about December 2, 2008, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, by exaggerating the degree of his injury to Dr. Miller by claiming that he was unable to drive even though he was observed driving his vehicle while away from the vicinity of the Department medical facility.

Initially, I will address that part of Specification No. 2 that alleges that the Respondent falsely told both of these physicians that he had "difficulty sitting." Even though Garguilo and Hengel testified credibly that they each observed the Respondent sitting on the driver's seat driving a car, because having "difficulty" doing a physical act is such a vague, subjective standard, their testimony does not establish that any claim the Respondent made that it was difficult for him to sit must have been a false claim. It is not disputed that an MRI that was performed on the Respondent on December 4,

2008, revealed that he has a herniated disc in his back. If the Respondent felt any pain whatsoever when he was in a seated position, this pain, however minimal, would support a claim by him that he found sitting difficult.

As to that part of Specification No. 2 that alleges that the Respondent falsely told both of these physicians that he was unable to drive an automobile, the Assistant Department Advocate (the Advocate) stated that the Department's sole proof that the Respondent asserted this (and thereby created "false entries" on these Department records) consists of the handwritten notes that Dr. White and Dr. Miller each made at the time of their respective appointments with the Respondent. Thus, the question of whether the Respondent "wrongfully caused false entries to be made in Department records" by falsely telling these physicians that he was unable to drive an automobile hinges on whether these physicians accurately heard and accurately recorded what the Respondent actually said to them regarding his ability to drive.

Based on Garguilo's and Hengel's observations of the Respondent driving a car, I would find the Respondent guilty of these charges if the Department had been able to show that the Respondent had unequivocally told Dr. White and Dr. Miller that he could not drive a car at all or that it was impossible for him to drive. However, since Dr. White and Dr. Miller both testified that they have no present recollection of what the Respondent said to them, the only evidence presented by the Department regarding what the Respondent said to them about his ability to drive is their handwritten, barely legible notes [which I have appended to this decision as ATTACHMENTS A & B].

Dr. White wrote that the Respondent on November 24, 2008, stated that he “can’t drive driven by his wife.” (DX 1) Dr. Miller wrote that the Respondent on December 2, 2008, “states unable to drive.” (DX 2)

Initially, I would note that both Dr. White and Dr. Miller were meeting with the Respondent for the purpose of determining his physical condition. Thus, neither physician was focused on whether or not he was accurately recording the precise words the Respondent used in responding to their questions. In fact, Dr. Miller admitted that he does not ask “specific function questions” during consults with MOS. Also, I find it significant that neither Dr. White nor Dr. Miller placed the words attributed to the Respondent regarding his inability to drive in quotations. Since Dr. White and Dr. Miller have no recollection of what the Respondent said to them, the omission of quotation marks raises the very real possibility that the words attributed to the Respondent are actually interpretative summaries of what he actually said. Also, neither Dr. White nor Dr. Miller testified that he showed his notes to the Respondent and asked him if they accurately reflected what he had told them. Finally, with regard to this question of accuracy, I find it significant that Dr. White wrote that the Respondent was “driven by his wife.” This notation is factually inaccurate because the Respondent was not married and, since the Respondent and Quiles both testified that the Respondent never referred to her as his wife, this inaccuracy reflects that Dr. White was writing down his own interpretation of what the Respondent was telling him. As a result, these physician notations do not have the same reliability as, for example, the tape recording of an official Department interview.

Based on above, these notes constitute insufficient proof that the Respondent unequivocally told Dr. White and Dr. Miller that he was physically unable to drive a car.

The Respondent is found Not Guilty of Specification Nos. 2 and 3.

Specification No. 4

It is charged that the Respondent “on or about December 9, 2008,” wrongfully engaged in conduct prejudicial to the good order, efficiency and discipline of the Department, in that he “exaggerated the degree of his injury when he was observed stopping and exiting the vehicle he operated, two blocks from a Department medical facility, to switch seats with his female passenger, who then drove the vehicle to the front of the medical facility, where” the Respondent “entered the facility walking with a cane.”

Based on a plain reading of this charge, the Department appears to be alleging that Respondent uttered a statement “on or about December 9, 2008,” in which he “exaggerated the degree of his injury.” However, the Advocate asserted that the allegation that the Respondent “exaggerated” refers not to any statement the Respondent made “on or about December 9, 2008,” but, rather, to the statements the Respondent made to Dr. White on November 24, 2008, and to Dr. Miller on December 2, 2008.

Since November 24, 2008 is not “on or about December 9, 2008,” the wording of this charge provided insufficient notice to the Respondent of the date on which he allegedly “exaggerated.” Also, since the Respondent is charged under Specification No. 2 with lying to Dr. Miller on December 2, 2008, and since knowingly exaggerating a condition constitutes lying, the misconduct alleged in this charge appears to be duplicative of the misconduct charged in Specification No. 3.

Moreover, the observations of the Respondent described in detail in the wording of this charge were cited by the Advocate as evidence of the exaggeration that the Respondent is alleged to have made to Dr. Miller (as charged under Specification No. 3). Thus, it appears that Specification No. 4, as written, does not allege any new misconduct by the Respondent. Rather, it is merely a recapitulation, albeit using different language, of the misconduct cited in Specification Nos. 2 and 3.

Finally, although I credit Hengel's testimony that he observed the Respondent on December 9, 2008, stopping and exiting the vehicle he was operating two blocks from a Department medical facility and switching seats with his female passenger (Quiles), who then drove the vehicle to the front of the medical facility, and that he observed the Respondent enter the medical facility walking with a cane, such observations, standing alone, do not support a Guilty finding.

In Disciplinary Case No. 84870/09 (signed on March 15, 2010), the Respondent police officer was found Not Guilty after trial of exaggerating her injury or medical condition by using a cane to assist herself while reporting to the Medical Division even though the officer was observed by Medical Division personnel performing physical activities without the assistance of a cane. In that case, as here, there was no evidence that the Respondent limped or otherwise emphasized to others her use of the cane. Nor were the Respondent's caneless physical activities during surveillance so rigorous as to lead to the conclusion that the cane was a purely theatrical property instead of a genuine walking aid.

Therefore, it is recommended that Specification No. 4 be Dismissed.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y. 2d 222 (1974).

The Respondent was appointed to the Department on June 30, 1992. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. The Respondent conducted a post-trial review of his personnel file and he has submitted letters of commendation and awards that were not contained in his personnel file.

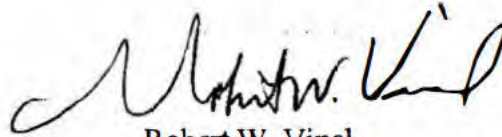
The Respondent has pleaded Guilty to being out of his residence on a single occasion for about four hours without having sought or received permission from a District Surgeon and or the Sick Desk Supervisor.

In Case No. 84096/08 (signed May 5, 2009), a four-year member who had no prior disciplinary record forfeited ten vacation days after pleading guilty to having been out of residence without permission while on sick leave for about six hours. In Case No. 84485/08 (signed May 19, 2009), an 18-year member with no prior disciplinary record forfeited eight vacation days for being out of residence without permission while on sick leave for about six hours. The Respondent admitted that he went out with his friends. In Case No. 84452/08 (signed September 24, 2009), a five-year member with no prior disciplinary record forfeited ten vacation days for being out of residence without permission while on sick leave. The Respondent left his residence to pick up his girlfriend and buy food. In Case No. 85469/09 (signed October 7, 2009), a five-year member who had one prior disciplinary adjudication, forfeited ten vacation days

for being out of residence without permission while on sick leave for one hour and 20 minutes.

Therefore, I recommend that the Respondent forfeit ten vacation days.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner - Trials

APPROVED



JAN 26 2011
RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE JOSEPH DIMICHELE
TAX REGISTRY NO. 901466
DISCIPLINARY CASE NO. 85472/09

The Respondent received an overall rating of 4.0 on his 2007 performance evaluation, 4.5 on his 2006 evaluation, and 4.5 on his 2005 evaluation. He has been awarded two Meritorious Police Duty medals and five Excellent Police Duty medals. [REDACTED]. He has no prior disciplinary record.

In September, 2009, he was placed in Level II Discipline Monitoring based on his overall record.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner – Trials